FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR.

Civil Application No. 1598 of 2006
(The State of Mah. & ors. Vs. Subhash Kunjilal Rathi)

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's Orders

Mrs. T.D. Khade, A.G.P. for the applicants.
Mr. A.H. Lohiya, Adv. for R-sole.

CORAM : Smt. Vasanti A. Naik, J.
DATE : 11th September, 2007

Heard the learned counsel for the parties.

It is stated in the civil application for condonation of delay that the impugned judgment was passed by the reference Court on 31/3/2005. The application for grant of certified copy was made on 2/4/2005 and the certified copies were ready and received on 26/5/2005. On 16/6/2005, the Law Officer had sent a communication recommending the filing of the appeal against the impugned judgment. The Joint Secretary of the Law and Judiciary Department, Nagpur, had accorded a sanction to the recommendation by letter dated 14/7/2005. The communication dated 25/7/2005 was received from the office of the Government Pleader for sending the

documents for filing the appeal. The demand draft of Rs. 600/- for filing the appeal was also sought for. Thereafter certain addresses of the claimants were also called for and the reminder letters were issued to the Acquiring Body lastly on 26/8/2005, seeking the demand draft. The addresses of the claimants were received on 30/8/2005. The required documents were prepared thereafter for the purpose of filing the appeal and the case papers were submitted to the office of the Government Pleader. The appeal was prepared and the civil applications for condonation of delay and stay were sworn in by the concerned officer. In all this process, there was a delay of about 107 days in filing the appeal. On the basis of the aforesaid facts, it is submitted on behalf of the applicants that the delay is neither intentional nor deliberate, but is bona fide and caused due to administrative reasons.

The application filed by the applicants was, however, opposed by the respondent by filing the reply. Some frivolous objections are taken in the reply. An objection is raised as to why the State Government did not apply for certified copy on the very same day i.e. 1/4/2005 when the judgment was delivered on

31/3/2005. It is then stated that after the receipt of the certified copy on 26/5/2005, no reason has been stated in the application as to why the delay occurred upto 16/6/2005 for recommending the filing of an appeal. It is highlighted in the reply that there are modern modes of communication like FAX, E-Mail and Cellphones and, therefore, delay in filing the present appeal is not due to bona fide reasons. It is further stated that the State has not explained or given any reason as to what happened in the intervening period from 14/7/2005 to 20/7/2005. Without stating the reason for denial, it is merely mentioned in the reply that the respondent denies that the applicants asked for sanction of demand draft of Rs.600/- on 8/8/2005. For each and every statement of fact incorporated in the civil application , there is a denial in the reply and the tenor of the reply shows that the delay caused in filing the appeal is not bona fide and the applicant was not interested in filing the appeal. It is stated in the reply that the applicants want to hold back and hide something from this Court and that has exposed the neglect and casual approach of the Government in this matter. Certain other facts are incorporated in the reply which are

not germane for deciding the application for condonation of delay such as, the respondent has stated that he urgently needs financial assistance and grave prejudice would be caused to the respondent if the matter is heard on merits and the delay is condoned. All in all, the respondent has cursed the casual and negligent attitude of the applicants in filing the civil application.

I have perused the contents of the application as well as the reply, which are already incorporated in this order. The applicants have, in fact, sufficiently explained the delay of 107 days in filing the first appeal. The contents of para no.2 of the civil application show that the applicants have hurriedly taken the steps to see that the appeal is filed as early as possible. By the reply filed by the respondent, the respondent wants the State to explain each and every day's delay in filing the first appeal.

Though separate yardstick cannot be applied for considering the delay caused when the appeal is filed by the State or a private party, the facts and circumstances of the case clearly reveal that the State has explained the delay caused in filing the appeal, to the utmost satisfaction of this Court. In fact, some

frivolous objections are raised in the reply which need to be discarded at the threshold. Normally, it is seen that in the State appeal where there is an application for condonation of delay, the application does not disclose a sufficient cause for belatedly filing of an appeal, but that was not so in the instant case.

The ratio laid down in the judgments reported in **AIR 1991, Allahabad, 229** and **AIR 1994 Orissa 90** and relied upon by the counsel for the respondent, cannot be applied to the case in hand. Even otherwise, there is no straight jacket formula for considering whether there is sufficient cause for condoning the delay caused in filing the appeal. Each and every case has to be considered on its own facts. As already stated herein above, from the facts of the case, it is clear that the applicants had sufficient cause for belatedly approaching this Court in the first appeal.

Civil application is, therefore, allowed and disposed of.

JUDGE

RMP